

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,	)	
	)	
Plaintiff(s),	)	No. C08-5216 BZ
	)	
v.	)	<b>ORDER GRANTING 12(b)(1)</b>
	)	<b>MOTION TO DISMISS</b>
ALVIN FLORIDA, JR., et al.,	)	
	)	
	)	
Defendant(s).	)	
_____	)	

Before me is defendants' motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction on the ground that diversity of citizenship is lacking because "plaintiff is undeniably a citizen of the State of California." (D's Mot. to Dismiss p.1.)<sup>1</sup> Defendants also argue that plaintiff fails to specify damages sufficient for the amount in controversy requirement. (D's Mot. to Dismiss p.9.) Because I find that plaintiff has failed to prove his Nevada citizenship for the purposes of establishing diversity jurisdiction, I need not reach the amount in controversy

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<sup>1</sup> All parties have consented to my jurisdiction for all proceedings including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

1 issue.

2 On November 18, 2008, plaintiff John Brosnan  
3 ("plaintiff"), proceeding *pro se*, filed this action invoking  
4 the Court's diversity jurisdiction against defendants Alvin  
5 Florida Jr. ("Florida"), Realty Info Systems ("RIS"), and  
6 Monetary Recovery Service, Inc. ("MRS") (collectively  
7 "defendants"), alleging state law claims arising out of an  
8 incident that took place at a foreclosure sale in Oakland,  
9 California between plaintiff and defendant Florida. Plaintiff  
10 alleges that he is a resident of Nevada and that all  
11 defendants are domiciled in California. (See Compl. ¶¶ 3-6.)

12 A federal court has subject matter jurisdiction over  
13 civil actions between citizens of different states where the  
14 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332. "If  
15 the court determines at any time that it lacks subject matter  
16 jurisdiction, the court must dismiss the action." Fed. R.  
17 Civ. P. 12(h)(3). Here, as the party invoking diversity  
18 jurisdiction, plaintiff bears the burden of pleading and  
19 proving the facts to support diversity. See Resnick v. La Paz  
20 Guest House Ranch, 289 F.2d 814, 819 (9th Cir. 1961). The  
21 test used to determine an individual's state of citizenship  
22 requires that the individual be domiciled in the state and  
23 intend to remain there indefinitely. Lew v. Moss, 797 F.2d  
24 747, 749 (9th Cir. 1986). A court will look at various  
25 objective factors to determine an individual's domicile.<sup>2</sup> Id.

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26  
27 <sup>2</sup> "[A]n individual's domicile involves a number of factors  
28 (no single factor controlling), including: current residence,  
voter registration and voter practices, location of personal  
and real property, location of brokerage and bank accounts,

1 at 750.

2 In support of their motion, defendants provided public  
3 records of plaintiff's past California employment and mailing  
4 addresses, of numerous civil suits where the plaintiff claimed  
5 California residency, and of recent litigation where a court  
6 determined plaintiff was domiciled in California and dismissed  
7 the case for lack of subject matter jurisdiction.<sup>3</sup> (D's Rep.  
8 to Opp'n ¶¶ 1-4.) Furthermore, an investigative search  
9 revealed no public records of plaintiff in Nevada. (Bender  
10 Decl. ¶ 6.) After this challenge, the burden shifted to  
11 plaintiff to provide substantive evidence that diversity in  
12 fact exists. See Sinclair v. Spatocco, 452 F.2d 1213 (9th  
13 Cir. 1971). Plaintiff failed to meet this burden. The only  
14 evidence plaintiff submitted is his declaration that he "is a  
15 resident of Nevada" and uses a Nevada address and phone  
16 number. (Opp'n ¶ 27.) Plaintiff's declaration is insufficient  
17 to establish diversity. Besides an unverified address,  
18 plaintiff has not provided any tangible connection to Nevada  
19 such as a rental agreement, driver's license, voter  
20 registration, or a bank account. Nor has plaintiff  
21 represented that he intends to reside and remain in Nevada  
22 indefinitely. Thus, both the objective facts and subjective

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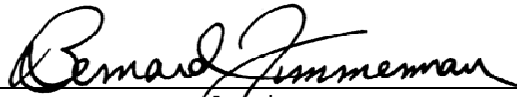
23 location of spouse and family, membership in unions and other  
24 organizations, place of employment or business, driver's  
25 license and automobile registration, and payment of taxes."  
Lew, 797 F.2d at 750.

26 <sup>3</sup> Though plaintiff's litigation history has some  
27 evidentiary value, it is not dispositive of the jurisdictional  
28 issue before me because plaintiff's citizenship is determined  
at the time this lawsuit was filed. See, e.g., Hill v.  
Rolleri, 615 F.2d 886, 889 (9th Cir. 1980).

1 intent necessary to establish citizenship are unsupported by  
2 the evidence.

3 After weighing the evidence presented by the parties, I  
4 find no need for argument and **VACATE** the hearing set for  
5 **June 24, 2009**. I also find that plaintiff has failed to prove  
6 that this Court has subject matter jurisdiction. For the  
7 reasons set forth above, **IT IS ORDERED** that defendants'  
8 12(b)(1) motion to dismiss is **GRANTED**.

9 Dated: June 22, 2009

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11 Bernard Zimmerman  
United States Magistrate Judge

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